

Albany
Atlanta
Brussels
Denver
Los Angeles

**McKenna Long
& Aldridge**
Attorneys at Law

303 Peachtree Street, NE • Suite 5300 • Atlanta, GA 30308
Tel: 404.527.4000 • Fax: 404.527.4198
www.mckennalong.com

New York
Philadelphia
Sacramento
San Diego
San Francisco
Washington, D.C.

SUSAN GANUCHEAU
(404) 527-4802

email address
SGANUCHEAU@MCKENNALONG.COM

January 27, 2009

BY FEDEX

Mr. Frankie D. Hampton
Mr. Jeff S. Jordan
Complaints Examination & Legal Administration
Federal Electric Commission
999 E Street, NW
Washington, D.C. 20463

Re: MUR #6140
In the matter of Loretta Sanchez, et al.
Andrew MacPherson and David Chastain

Dear Mr. Jordan and Mr. Hampton:

Please find enclosed Barr 2008 Presidential Committee, David Chastain, and Andrew MacPherson's Response to Complaint in connection with the above-referenced matter.

Thank you for your assistance. If you have any questions, please give me a call.

Sincerely,



Susan Ganucheau
Legal Assistant to Stefan C. Passantino

Enclosure

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2009 JAN 28 A 11:23

29044250767

**BEFORE THE
FEDERAL ELECTION COMMISSION**

CITIZENS FOR RESPONSIBILITY AND)
ETHICS IN WASHINGTON & MELANIE)
SLOAN)

v.)

MUR No. 6140

ROBERT E. ANDREWS, ROB ANDREWS)
U.S. HOUSE COMMITTEE, LORETTA)
SANCHEZ, COMMITTEE TO RE-ELECT)
LORETTA SANCHEZ, BILL DEW, BILL)
DEW FOR CONGRESS, WILLIAM JAMES)
BREAZEALE, BREAZEALE FOR)
CONGRESS, ANDREW MACPHERSON, &)
BARR 2008 PRESIDENTIAL COMMITTEE)

**BARR 2008 PRESIDENTIAL COMMITTEE, DAVID CHASTAIN, AND ANDREW
MACPHERSON'S RESPONSE TO COMPLAINT**

The Barr 2008 Presidential Committee ("Barr 2008"), David Chastain, and Andrew MacPherson (collectively the "Barr Respondents") submit this Response to the above-styled Complaint (the "Complaint") filed with the Federal Election Commission ("FEC" or the "Commission") by Citizens for Responsibility and Ethics in Washington ("CREW") and Melanie Sloan (collectively "Complainants"). As an initial matter, the Barr Respondents do not purport to address the allegations against the other respondents cited in the Complaint. Rather, the Barr Respondents strongly contend that the allegations contained in the Complaint as to them are without merit and do not warrant further action by the Commission because the Complainants' allegations are predicated on erroneous factual assumptions which are demonstrably untrue. As such claims have absolutely no basis in fact, the Commission need not give this matter further investigation or action and the Complaint should be immediately dismissed as it pertains to the Barr Respondents.

29044250769

I. STATEMENT OF FACTS

Barr 2008 is the campaign committee for the Libertarian Party's 2008 nominee for President, Bob Barr. Andrew MacPherson was employed by Barr 2008 as Policy Assistant. (Declaration of Andrew MacPherson, attached as Exhibit A.) In August 2008, Mr. MacPherson asked Barr 2008 for a one-time enhancement of \$500 to his compensation due to his work for the campaign. (Id.) Barr 2008 agreed to the one-time enhancement of compensation due to Mr. MacPherson's work on the campaign, and paid him \$500 in compensation on August 12, 2008. (Id.) This August 12, 2008 payment of \$500 to Mr. MacPherson was compensation for his activities as a campaign staff person for Barr 2008, and it was at all times up to his discretion regarding how he personally chose to use the compensation. (Id.)

Barr 2008's FEC Report of Itemized Disbursements which covered the time period during which the payment to Mr. MacPherson was made incorrectly listed the purpose of such compensation to Mr. MacPherson as a "clothing allowance." (Declaration of David Chastain, attached as Exhibit B.) This payment to Mr. MacPherson should have been described as "compensation" on Barr 2008's report to the Commission because it was at all times up to Mr. MacPherson's discretion as to how to use the compensation provided to him. (Id.) Barr 2008 made this payment to Mr. MacPherson solely to compensate him for his work as a staff member of Barr 2008. (Id.) An appropriate amendment to Barr 2008's applicable report is being prepared to more clearly define the purpose of the disbursement, which was compensation. (Id.)

II. ARGUMENT

The Complainants allege that the Barr Respondents violated 2 U.S.C. § 439a(b) and 11 C.F.R. § 113.1(g)(1), presumably based solely on the fact that Mr. MacPherson was given a one-time \$500 compensation payment for his work as a Barr 2008 staff person. As is demonstrated

below, a campaign staff person's receipt of compensation for work on a campaign does not constitute "conversion" of campaign funds to "personal use."

2 U.S.C. § 439a(b) states in relevant part that:

(1) *In general.* A contribution or donation...shall not be converted by any person to personal use.

(2) *Conversion.* For the purposes of paragraph (1), a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office, including—

- (A) a home mortgage, rent, or utility payment;
- (B) a clothing purchase;
- (C) a noncampaign-related automobile expense;
- (D) a country club membership;
- (E) a vacation or other noncampaign-related trip;
- (F) a household food item;
- (G) a tuition payment;
- (H) admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign; and
- (I) dues, fees, and other payments to a health club or recreational facility.

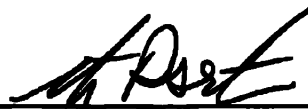
11 C.F.R. § 113.1(g)(1) defines "personal use" as "any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder."

The key to both regulations is that campaign funds are only "converted" to "personal use" if such funds are used to pay for expenses that would exist *irrespective* of a Federal candidate's campaign. Here, the \$500 payment that Complainants allege was "converted" to Mr. MacPherson's "personal use" was nothing more than a one-time payment from Barr 2008 to compensate Mr. MacPherson for his work on the campaign. The Complaint must be dismissed because this compensation payment was made to Mr. MacPherson solely *because of* the Barr 2008 campaign and his work for the campaign, and clearly was *not* a payment made to Mr. MacPherson to pay for his personal obligations that would have existed irrespective of the Barr

2008 campaign. The fact that the Barr 2008 campaign erroneously labeled the compensation payment as a "clothing allowance" rather than "compensation" does not warrant further action by the Commission, particularly because an appropriate amendment to Barr 2008's applicable report is being prepared to more clearly define the purpose of the disbursement, which was compensation.

As such, the Commission should appropriately dismiss the Complaint against the Barr Respondents and find no reason to believe that the Barr Respondents have violated the Act or the regulations promulgated thereunder.

Respectfully Submitted,



Stefan C. Passantino
McKenna Long & Aldridge LLP
1900 K Street, NW
Washington, DC 20006
Telephone: (202) 496-7138

Designated counsel for the Barr 2008 Presidential
Committee, David Chastain and Andrew
MacPherson

29044250771